



Purpose →

- ✓ Severs all legal familial rights and ties between a child and the birth parents, freeing the child for adoption.
- ✓ After termination, parents are no longer entitled to notice of future court proceedings concerning the child.
- ✓ Termination of parental rights ends the duty to provide continuing child support and the legal right to visit the child.

When →

- ✓ The proceeding should be initiated as soon as possible after IDHW or the court makes a determination that reunification cannot occur;
- ✓ Idaho Code § 16-1624 requires that a termination of parental rights proceeding must be filed:
 - ◆ Within 60 days of a finding of aggravated circumstances (unless there are compelling reasons why termination would not be in the child's best interests, OR
 - ◆ Within 60 days of a finding that an infant has been abandoned;
 - ◆ If the child was abandoned under the Idaho Safe Haven Act, Idaho Code § 39-8205(5) as soon as possible after the 30 day investigation period
- ✓ Under Federal law the state must either file or join in a previously filed termination proceeding if the child has been in custody for 15 out of the most recent 22 months. 42 U.S.C. § 675(5)(F)
- ✓ Hearing may be held no sooner than 10 days after service of notice on parents or guardians OR no later than ten days after last publication of notice.

Best Practice Recommendation

An action to terminate parental rights should not be delayed until an adoptive family is identified – such delays slow permanency for the child.

Where →

- ✓ The court having jurisdiction over the child in a Child Protective Act case has exclusive jurisdiction over an action to terminate parental rights. Idaho Code § 16-2003.

Who →

- ✓ Parent (when termination is sought as to the other parent)
- ✓ Guardian of the person, legal custodian, or other person standing in loco parentis to child
- ✓ IDHW
- ✓ Child's Guardian *ad litem*
- ✓ Any other person with legitimate interest

Practice Note

Costs are payable by petitioner unless the petitioner is the authorized agency. The court can suspend costs for hardship to petitioner or where otherwise appropriate. Idaho Code § 16-2012.





Termination of Parental Rights

Petition

- ✓ Petition must be sworn
- ✓ Petition must contain the following information, pursuant to Idaho Code § 16-2006:
 - ◆ Name and place of residence of Petitioner (parent, authorized agency, guardian, person in loco parentis or person with legitimate interest);
 - ◆ Name of child, gender, date and place of birth, place of child's residence;
 - ◆ Jurisdiction (the court having jurisdiction over the child in a CPA case has exclusive jurisdiction (Idaho Code § 16-2003)
 - ◆ Relationship of the Petitioner to the child (or the fact that no relationship exists);
 - ◆ Names, addresses and dates of birth of both parents (if known);
 - ◆ If the parent is a minor, the names and address of the minor's parents or legal guardian OR next of kin if the minor has no parents;
 - ◆ Grounds for termination (see below – Required State Findings); and,
 - ◆ Person or authorized agency to whom legal custody or guardianship of the child may be transferred

Practice Note

The action to Terminate Parental Rights may be consolidated with an action for adoption if the provisions of both the TPR and adoption statute are met. Idaho Code § 16-1506(4).

Appointments

- ✓ Counsel must be appointed for indigent parents or guardians pursuant to Idaho Code § 16-1611 and 16-2009;
- ✓ The court may appoint a guardian ad litem for the parents or any other party to the action pursuant to Idaho Code § 16-2007;
- ✓ The court may appoint a guardian ad litem for the child pursuant to Idaho Code §§ 16-1614 and 5-306.

Best Practice Recommendation

The counsel and guardians ad litem appointed in the Child Protective Act case should be continued or immediately reappointed.

Notice

How

- ✓ Personal service upon the parents and/or guardian of the child.
- ✓ If reasonable efforts at personal service have been unsuccessful OR if the whereabouts of parents and/or guardians is not known or reasonably ascertainable, the court may order notice by certified or registered mail at the last known address of the person and by publication for 3 consecutive weeks in the newspaper designated by the court as most likely to give notice to the person. Idaho Code § 16-2007.
- ✓ No special method of service is provided for other persons entitled to notice
- ✓ The hearing on the petition may take place no sooner than 10 days after service of notice OR 10 days after the last date of publication

Notice

Who

The following persons who have not signed a consent to termination pursuant to Idaho Code § 16-2005(4) or a Waiver of Notice and Appearance pursuant to Idaho Code § 16-1007(3) are entitled to notice:

- ✓ the petitioner;
- ✓ the child, if he or she is over age 12;
- ✓ the mother of the child;
- ✓ the father or putative father of the child if he
 - is currently married to the mother or was married to the mother at the time she executed a consent to terminate rights or otherwise relinquished the child;
 - has been adjudicated the father of the child prior to the execution of a consent to termination by the mother;
 - has filed notice of the commencement of a paternity action and complied with Idaho Code § 16-1513;
 - is recorded on the birth certificate as the child's father with the knowledge and consent of the mother;
 - is openly living in the same household with the child and holding himself out as the child's father at the time the mother executes a consent or relinquishment;
 - has filed a voluntary acknowledgment of paternity pursuant to Idaho Code § 7-1106
 - has developed a substantial relationship with the child who is more than 6 months old and has taken responsibility for the child's future and financial support pursuant to Idaho Code § 16-1504(2)(a)
 - has developed a substantial relationship with a child under the age of 6 months and has commenced paternity proceedings and complied with Idaho Code § 16-1504(b)
- ✓ the legally appointed guardian of the person or custodian of the child;
- ✓ the guardian ad litem for the child or for any other party.
- ✓ any person standing "in loco parentis to the child" (Idaho Code § 16-2007);
- ✓ the nearest blood relative named in the petition, if service cannot be had on the parent or guardian (Idaho Code § 16-2007)
- ✓ IDHW

Who Should be Present at Hearings

- ✓ the judge who has monitored the case from the first hearing;
- ✓ the child, if of appropriate age;
- ✓ parent(s);
- ✓ attorneys for the parent(s);
- ✓ if an Indian child, the child's tribe, the attorney for the child's tribe, if any, and the Indian custodian;
- ✓ assigned IDHW caseworker(s) (including adoption caseworker);
- ✓ prosecuting attorney or deputy attorney general;
- ✓ guardian ad litem for the child, whether attorney, social worker or other paid non-attorney, or CASA;
- ✓ attorney for the child, when applicable;
- ✓ foster parent(s), and prospective adoptive parent(s);
- ✓ relatives who are caretakers of the child or who are involved in an adoption with contact agreement, when applicable;
- ✓ court reporter or suitable recording technology; and
- ✓ court security and other court staff.





Termination of Parental Rights

Consent to Termination of Parental Rights →

- ✓ Consult special provisions of ICWA if child is an Indian child (*See* ICWA Benchcard & Chapter XI of CP Manual)
- ✓ Indigent parties are entitled to appointment of counsel prior to signing a consent to terminate parental rights.
- ✓ Consent to terminate parental rights pursuant to Idaho Code § 16-2005 must:
 - ◆ be executed using the statutory form prescribed in Idaho Code § 16-2005(4);
 - ◆ be knowing and voluntary;
 - ◆ be witnessed by a district judge, magistrate judge or comparable judicial officer of another state;
 - ◆ if executed in another state, must be the result of a proceeding similar to Idaho's OR be authorized under the laws of that state.
- ✓ Unless the consent is filed by a licensed adoption agency or in conjunction with a petition for adoption the court must hold a hearing.
- ✓ Where the parent whose rights are being terminated is a minor his/her parents (the grandparents of the child) must sign the consent.

Best Practice Recommendations

To evaluate whether a consent is knowing and voluntary ,make the following inquiry:

- ✓ State in your own words why we are here today. Can you read, write and understand English? What was the last grade you finished in school? Have you read the Consent to Terminate your parental rights? Do you understand it? If not, what do you not understand?
- ✓ If you sign this document do you understand that your baby will be put up for adoption? You may not know when or how? You may never know where or with whom your baby will be placed? The law will treat you and your baby as strangers – as if you were never related to each other? You will give up all rights to inheritance? You will have no legal rights or responsibilities for your child from this day forward?
- ✓ Have you talked to people you trust regarding your decision to terminate your parental rights? Who (parents, family, friends or caseworker)? Do they support your decision? How long have you thought about your decision? Have you had enough time to make this decision? Is the decision your own personal decision? Has anyone made promises or threats to you to gain your agreement? Have you received money for this decision?
- ✓ Are you under the influence of any medication, drugs or alcohol at this time? If so does it have any impact on your ability to make a decision?
- ✓ Are you willing to sign this consent? Do you understand that the consent is a final decision and you cannot change your mind? Do you believe your decision is in the best interest of your child and yourself? Why? If you are consenting for financial reasons do you understand that there are funds available from the state to assist you in raising your child?

A Copy of the Order Terminating Parental Rights should be sent to each parent who consents to termination so that they have evidence that their parental rights were actually terminated for purposes such as ending their child support obligations.

Pre- Disposition Investigations

Idaho Code § 16-2008

- ✓ Reports of the pre-disposition investigation must be submitted to the court within 30 days after the petition is filed;
- ✓ If no petition for adoption is filed in conjunction with the petition for termination, or if petition for termination is not filed by a licensed adoption agency, IDHW must file a financial analysis report detailing unreimbursed public funds spent on behalf of the child;
- ✓ If no consent to termination is filed, IDHW must file a report of its social investigation detailing
 - ◆ the circumstances of the petition, investigation, present condition of child and parents,
 - ◆ proposed plans for child
 - ◆ a recommendation and reasons for termination of parental rights
 - ◆ if the parent is disabled, information submitted by the parent regarding whether the use of adaptive equipment or supportive service would enable the parent to continue the parent/child relationship

Hearing

- ✓ Required unless parents execute written consent (Idaho Code § 16-2010);
- ✓ Closed (except for any person requested by those entitled to notice or person judge finds has direct interest in case or work of the court) and confidential.
- ✓ Burden of Proof is clear and convincing evidence

Required State Law Findings

Idaho Code § 16-2005

- ✓ The court must find that termination of parental rights is in the best interest of the child AND that:
 - ◆ the parent has abandoned the child (by willfully failing to maintain a normal relationship including failure to pay reasonable support and have regular personal contact (failure for one year is prima facie evidence of abandonment));
 - ◆ the parent has neglected the child as defined in the CPA (Idaho Code § 16-1602(25)) OR the parent has failed to comply with the court's orders in a CPA case including the case plan and reunification has not occurred within the CPA time frames;
 - ◆ the parent has abused the child as defined in the CPA (Idaho Code § 16-1602(1));
 - ◆ the presumptive parent is not the biological parent of the child;
 - ◆ the parent is unable to discharge her or his parental responsibilities and there are reasonable grounds to believe that the condition will continue for a prolonged period of time and will be injurious to the child's health, morals or well-being; OR
 - ◆ the parent is incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority.





Termination of Parental Rights

Required State Law Findings

Con't.

- ✓ The court may presume that termination of parental rights is in the best interests of the child where:
 - ◆ the parent caused the child to be conceived as a result of rape, incest, lewd conduct with a minor under the age of 16, or sexual abuse of a minor under the age of sixteen, Idaho Code § 16-1605(2)(a);
 - ◆ the parent has subjected the child to torture, chronic abuse or sexual abuse, has committed murder or voluntary manslaughter of another child or has aided, abetted, conspired or solicited to commit such murder or voluntary manslaughter, or has committed battery which resulted in serious bodily injury to a child, Idaho Code § 16-1605(2)(b); OR
 - ◆ the child is an abandoned infant, Idaho Code § 16-1605(2)(c).
- ✓ The court may grant termination of parental rights where it finds that termination is in the best interests of the parent and the child. Idaho Code § 16-1605(3)

Required Federal Findings

45 CFR 1356.21(b)(2),
1355.20(a)

- ✓ What: IDHW made reasonable efforts to finalize a permanency plan. (This means reasonable efforts to achieve the current placement objective, whether it is reunification, termination, etc.)
- ✓ When: Within one year from the date the child entered foster care, and at least once every twelve months thereafter. The date the child entered foster care is the date the court found the child to come within the jurisdiction of the act (the adjudicatory hearing) or 60 days from the date the child was removed from the home, whichever is first.
- ✓ How: Case-specific and documented in the court's order. (Can incorporate an affidavit by reference. If the finding is made on the record but omitted from the order, the omission can be corrected with a transcript.)
- ✓ If not: If the finding is not made by the deadline, the child will lose eligibility for federal funds. Eligibility CAN BE REINSTATED once the required finding is made.

Best Practice Recommendations

- ✓ After the agency or the court makes a determination that reunification cannot occur, a termination of parental rights proceeding should be filed within 30 days, a trial should be held within 90 days of filing and the court should deliver its decision within 14 days after trial.
- ✓ Courts and parties should fully employ mediation and other pre-trial negotiation methods to voluntarily settle termination of parental rights actions. Courts should order the use of appropriate settlement techniques under IRCP 16.
- ✓ The parties should consider voluntary post adoption contact agreements when negotiating the settlement of termination of parental rights actions, where appropriate.
- ✓ Inform the parents about the Voluntary Adoption Registry if appropriate.